

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO 980 OF 2005
ALONG WITH
CIVIL APPLICATION NO.1155 OF 2005

1. The Golden Queries
and anr.

...Appellants.

V/s

1. Jayant Shivajirao Sanap
and Ors.

...Respondents.

Mr. P. N. Joshi for the appellants.

Mr. V.S. Talkute with Mr. A.R. Kapadnis for
respondent Nos. 1 and 2.

CORAM: V.M.KANADE,J.
DATE : 26th October, 2005

P.C.

1. Heard the learned counsel appearing on behalf of the appellants and the learned counsel appearing on behalf of respondent Nos. 1 and 2.

2. Appellants are challenging the order passed by the Trial Court on an application filed by the respondents for temporary injunction restraining the appellants herein from carrying on quarrying activities.

3. The learned counsel appearing on behalf of the appellants submitted that the preliminary objection was raised by the defendants in the trial court that the Civil Court did not have jurisdiction to try and decide the suit and that only the Rent Court has a

jurisdiction to decide the issue involved in the suit. He submitted that the Trial Court, instead of framing the preliminary issue regarding the jurisdiction of the Court, tried and decided the case finally by deciding application at Exhibit-5 filed by the respondents - plaintiffs and granted injunction in favour of the respondents.

4. The learned counsel appearing on behalf of the respondents submitted that the Trial Court, admittedly, had not framed the issue of jurisdiction. He submitted that the lease agreement having lapsed by efflux of time, the defendants were merely trespassers and, therefore, had no right and interest over the suit property.

5. In my view, order of the Trial Court is liable to be set aside as it is a settled position in law that if a question pertaining to the jurisdiction of the Trial Court is raised by the defendants, Section 9A of the Civil Procedure Code which is applicable in the State of Maharashtra casts duty on the Court to frame the said preliminary issue and, thereafter, decide the notice of motion on merits. In the present case, admittedly, this procedure has not been followed by the Trial Court. Therefore, the order passed by the

Trial Court is quashed and set aside. The Trial Court is directed to frame the preliminary issue on the point of jurisdiction and permit the parties to lead evidence if they so desire and decide the said issue as expeditiously as possible and, in any case, within a period of two months. Parties to appear before the Trial Court on 14/11/2005.

6. Appellants seek permission to delete respondent Nos. 3, 4 and 5 as they are not necessary parties. Permission granted.

7. Appeal is accordingly disposed of. In view of the disposal of the Appeal, Civil Application No. 1155 of 2005 taken out therein does not survive and the same is accordingly disposed of.

8. All concerned to act on the copy of this order duly authenticated by the Registry.

V.M. KANADE, J.